

June 14, 2019

VIA ECF

Honorable Jon S. Tigar
San Francisco Courthouse
Courtroom 9 – 19th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Re: *Eolas Technologies Inc. v. Amazon.com, Inc.*, No. 3:17-cv-3022-JST-JSC (N.D. Cal.);
Eolas Technologies Inc. v. Google LLC, No. 3:17-cv-1138-JST-JSC (N.D. Cal.)

Dear Judge Tigar:

In its June 7, 2019 letter (Dkt. 542) concerning the upcoming June 20 hearing, Eolas represents that “Messrs. McKool, Burgess, Campbell, Budwin, Doyle, Stetson, and Swords will be available to provide live testimony if the Court believes it would be helpful.” Should the Court wish to question these witnesses, Amazon and Google of course have no objection but respectfully request that they be given an opportunity to follow up with cross examination on the same subject matter.

To the extent that Eolas’s letter suggests that it wishes to affirmatively present the testimony of these Eolas and McKool Smith witnesses during the hearing, however, Amazon and Google do object to that request as an improper attempt to inject new testimony into the record long after the close of briefing. Given that these witnesses were deposed in connection with prosecution bar discovery and submitted additional testimony via declarations, it is unclear what benefit such duplicative testimony would provide and any new testimony added by Eolas for the first time at the hearing would be unfairly prejudicial. Further, live testimony would likely require the court to resolve in real time the same type of privilege objections that Eolas’s counsel interposed throughout prosecution bar discovery, as well as corresponding sword and shield issues flowing from those objections. That would impede the orderly progression of the June 20 hearing.

Respectfully submitted,

/s/ David A. Perlson
David A. Perlson

Counsel for Defendant Google LLC

/s/ Douglas E. Lumish
Douglas E. Lumish

Counsel for Defendant Amazon.com, Inc.

ATTESTATION

I, David A. Perlson am the ECF user whose user ID and password authorized the filing of this document. Under Civil L.R. 5-1(i)(3), I attest that all signatories to this document have concurred in this filing.

DATED: June 14, 2019

/s/ David A. Perlson
David A. Perlson